



**U.S. DEPARTMENT OF TRANSPORTATION**  
FEDERAL HIGHWAY ADMINISTRATION  
CALIFORNIA DIVISION  
650 Capitol Mall, Suite 4-100  
Sacramento, CA. 95814  
November 21, 2006

IN REPLY REFER TO

HDA-CA

Signed DRP Transmittal  
Document # S49855

Will Kempton, Director  
California Department of Transportation  
P.O. Box 942874  
Sacramento, CA 94274

Attention: Jay Norvell, Chief, Division of Environmental Analysis

Dear Mr. Kempton:

SUBJECT: Transmittal of Signed Final Dispute Resolution Process Flowchart

The Federal Highway Administration (FHWA) in cooperation with California Department of Transportation, and U.S. Fish and Wildlife Service is pleased to distribute the final version of the dispute resolution process flowchart and elevation ladder. The dispute resolution flowchart has been signed by all parties and is now effective. FHWA thanks you for your participation and effort in developing and refining this project streamlining tool. Please find enclosed an original signed copy for your records. In addition an electronic version including signatures will be distributed via email.

If you have any questions, please contact Dave Tedrick, Environmental Program Coordinator at (916) 498-5024 or via email to [david.tedrick@fhwa.dot.gov](mailto:david.tedrick@fhwa.dot.gov)

Sincerely,

For  
Gene K. Fong  
Division Administrator

Enclosure # S49567





U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
CALIFORNIA DIVISION  
650 Capitol Mall, Suite 4-100  
Sacramento, CA. 95814  
September 6, 2006

IN REPLY REFER TO  
HDA-CA  
File # Dispute Resolution Process  
Document # S49567

SUBJECT: Joint Memorandum for the Dispute Resolution Process (DRP)

Attached is the flow chart and elevation ladder for the DRP that staffs from the three signatory agencies have been working on for several months. It is believed that this process will expedite Section 7 consultations pursuant to the Endangered Species Act.

Once all signatory parties have signed this memorandum, this process will be effective immediately.

Gene K. Fong  
California Division Administrator  
Federal Highway Administration

Gene K. Fong Date 9/27/06

**Acting**

Steve Thompson  
California/Nevada Operations Manager  
U.S. Fish and Wildlife Service

Paul Thompson Date 10/23/06

Will Kempton  
Director  
California Department of Transportation

Will Kempton Date 10/3/06

Attachment

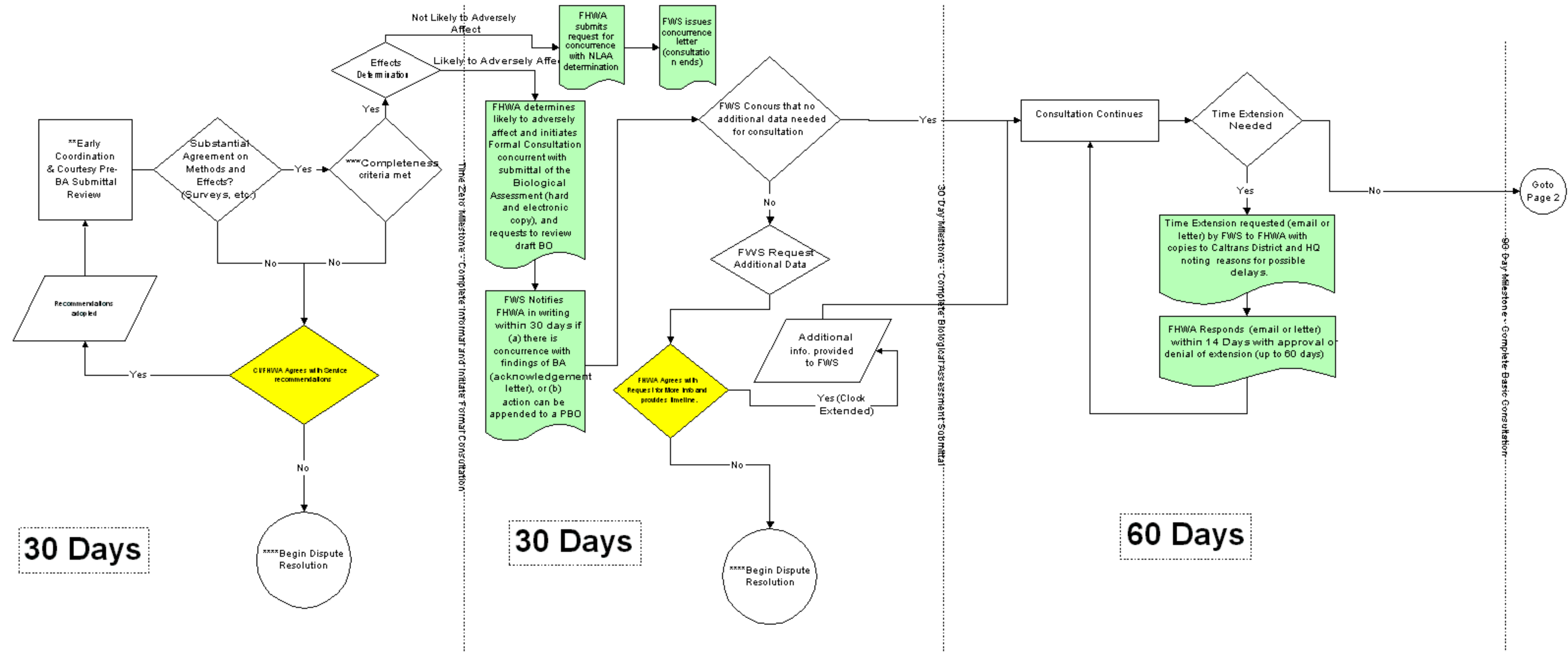


# Dispute Resolution Process for ESA Section 7

## Consultations

### Communication Plan and Process Checks\*

9/6/2006









\* The purpose of the dispute resolution flowchart is to represent some key points in the Section 7 consultation process; the intent is not to define a new consultation process. However, use of the dispute resolution process is not necessarily limited to the trigger points identified in this flowchart. This flowchart does not supersede any existing Federal regulations, and is intended to help clarify existing procedures already in place.

\*\* Caltrans/FHWA makes the effect, no effect determination for projects. If a project "may effect" threatened and/or endangered species, or their critical habitat, then informal consultation may be initiated. Effective Informal Consultation includes early coordination between FWS and CT/FHWA on methods, analysis, and information to be included in the Biological Assessments (BA). The FWS will provide a courtesy critique of presubmittal BAs when requested at least 30 days prior to initiation of formal consultation. In this review, the FWS will define (a) any deficiencies of completeness (6-elements criteria), (b) make note of any additional information recommendations to ensure effective and timely preparation of a biological opinion, and (c) provide feedback on analysis of effects as appropriate. Completeness of BA package should be established before formal consultation is initiated. A request for additional information beyond the "completeness" criteria or minor disagreements on effects analysis should not preclude the initiation of formal consultation. However, where substantial issues are anticipated to delay consultation, early dispute resolution is an option to preclude later disagreements. *Note: this early feedback will not influence jeopardy/non-jeopardy determinations, but rather is intended to facilitate the effective preparations of the information necessary for such decisions.*

\*\*\* In order to comply with Section 7 regulations (50 CFR 402.14(c)), to request formal consultation, the initiation package must meet the following six criteria: 1) a description of the action being considered; 2) a description of the specific area that may be affected by the action; 3) a description of any listed species or critical habitat that may be affected by the action; 4) a description of the manner in which the action may affect any listed species or critical habitat, and an analysis of any cumulative effects; 5) relevant reports, including any environmental impact statements, environmental assessments, biological assessment or other analyses prepared on the proposal; and 6) any relevant studies or other information available on the action, the affected listed species, or critical habitat.

\*\*\*\* Once the dispute resolution process reaches 1<sup>st</sup> level management, the time taken to resolve any outstanding issues will not be counted against the overall 135 day timeframe to complete the biological opinion. The biological opinion timeframe will be extended proportional to the time required during the dispute resolution process.

#### Flow Chart Key

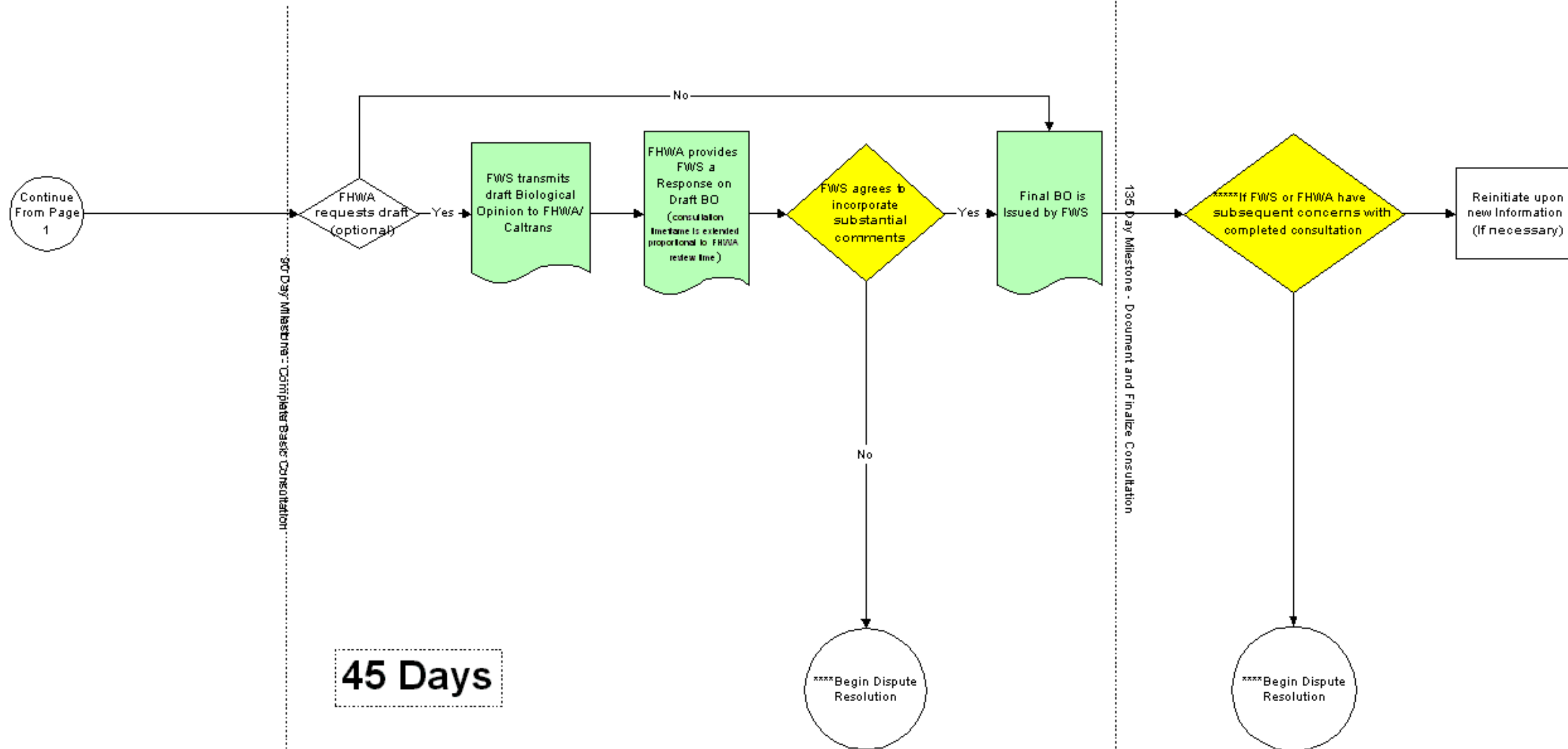
-  Defines a Process
-  Denotes a Document
-  Denotes a Data
-  Indicates a Decision
-  Reference to Jump to Another Page
-  Process Flow

# Dispute Resolution Process for ESA Section 7

## Consultations







### Communication Plan and Process Checks

9/6/2006



\*\*\*\*\* FHWA agree that the BO relied on the best scientific information available, and that the Terms and Conditions in the Incidental Take Statement comply with the minor change provision, and are implementable under FHWA's legal authority and jurisdiction.

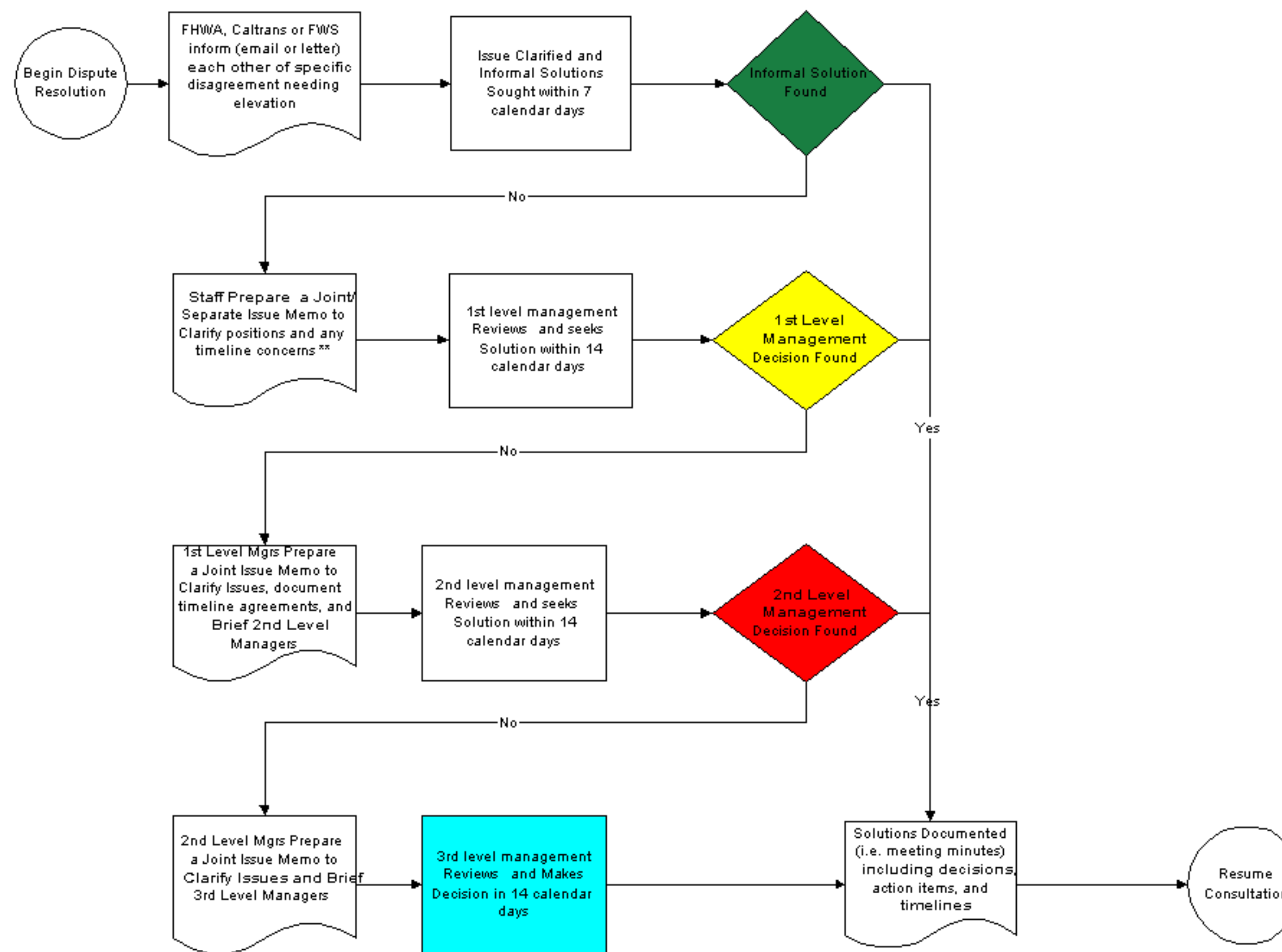
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# Dispute Resolution Process for ESA Section 7 Consultations

## Elevation Ladder and Decision Points\*







9/5/2006



\* The positions of responsibility for each level of management decision-making in this resolution page are referenced in the dispute resolution ladder.

\*\* Once the dispute resolution process reaches 1<sup>st</sup> level management, the time taken to resolve any outstanding issues will not be counted against the overall 135 day timeframe to complete the biological opinion. The biological opinion timeframe will be extended proportional to the time required during the dispute resolution process.

### Flow Chart Key

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# FHWA California Division – USFWS California / Nevada Operations Office – California

## Department of Transportation

### Dispute Resolution Process for ESA Section 7 Consultations

This elevation process is not a substitute for the proper interaction and proactive resolution of issues by staff at the working level. However, if the parties cannot agree on the level of information needed to resolve a consultation at the 30 day letter stage, or if consultation deadlines are exceeded – 135 days\* for formal consultations, 60 days for appending to a programmatic B.O., or 60 days for an informal consultation -- then disputes should be quickly and automatically elevated.

\* Or extended time agreed to by FHWA.

**Dispute Resolution Ladder**

Levels	USFWS	Caltrans	FHWA
0	Assistant Field Supervisor or Designee	Office Chief or Project Manager	Team Leader
1	Field Supervisor	District Director or District Environmental Division Chief	Director, Project Development & Environment
2	CNO Assistant Manager followed by the CNO Operations Manager or Designee*	Chief Environmental Planner or Designee	Division Administrator or Designee
3	Assistant Director, Endangered Species or Designee	Director or Designee	Associate Administrator for Planning, Environment and Realty or Designee

**Assumptions:**

- 1) This is not intended to be a communication process or replace problem-solving and communications at project team level
- 2) Staff are expected to communicate in an open and timely fashion, and do their best to resolve issues before elevating
- 3) It is envisioned that most issues will be resolved at the first two levels
- 4) Discussion Papers will be prepared for all issues that are elevated to the next level. The papers should clearly communicate each sides position, present all the alternatives identified, and discuss advantages and disadvantages of each. Agreement of any extension of time for consultation or information gathering should also be expressed in the Issue Memo.
- 5) Time to elevate is from the day one party concludes (and notifies the others) there is a disagreement which cannot be reconciled at their level and includes the time to prepare brief issue paper(s) on the matter. The issue paper(s) should state both sides and others must have a chance to review.
- 6) As necessary, each agency may call upon experts to assist with resolution of any issue
- 7) At the 1<sup>st</sup> level alternative resolution options or solutions could be employed. If an impasse at the 2<sup>nd</sup> level occurs, the process recognizes the need to elevate to Washington D.C.
- 8) Resolution must be documented and available for future reference.

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\* The CNO Assistant Manager will first review and seek to resolve issues prior to elevation up to CNO Operations Manager. This will not affect the set timeframes established for the dispute resolution process.